BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of	)
	)
FREDERICK A. SEBRING	)

For Appellants:	Frederick A. Sebring, in pro. per.
For Respondent:	Kathleen M. Morris Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Frederick A. Sebring against proposed assessments of additional personal income tax in the amounts of $139.48 and $298.09 for the years 1975 and 1976, respectively. Because respondent attributed one of the disallowed deductions to the wrong year, respondent has determined, subsequent to the appeal, that the tax assessments should be in the amounts of $95.27 and $342.32 for the years 1975 and 1976, respectively.

Appellant Frederick A. Sebring, an engineer, and his wife, Helen P. Sebring (hereinafter "Helen"), a school teacher, filed joint returns for the appeal years. On their returns, appellant and Helen claimed a number of itemized deductions. Specifically, they claimed a deduction for expenses attributable to a home office in the amount of $625.42 and $626.62 for the years 1975 and 1976, respectively. Respondent allowed 50 percent of the claimed office expense for each year; In 1976 appellant and Helen took a trip to Alaska and deducted $402.02 as an educational expense incurred by Helen. This deduction was disallowed entirely when respondent concluded that Helen's trip was primarily a vacation and thus personal in nature. The disallowed $402.02 expense was attributed erroneously by respondent to 1975 rather than to 1976. Respondent concedes that the correct application of this adjustment results in revised deficiencies of tax in the amounts of $95.27 and $342.32 for the years 1975 and 1976, respectively, as indicated above. Appellant also made numerous stock transactions each year. On the joint returns they claimed the following expenses as being related thereto, which were disallowed by respondent in their entirety:

	1975	1976
Phone equipment	$107.97	--
Los Angeles Times	57.00	$ 58.70
Time and New Times Magazines	--	31.00
Paid to daughters	80.90	2,307.01
Accounting for taxes	200.00	--
Total	$445.87	$2,396.71

The issues for determination are:

1 Whether appellant is entitled to deductions for the use of part of his home as an office in amounts larger than those allowed by respondent;'

2. Whether Helen is entitled to deduct a portion of her expenses incurred on their Alaskan trip as educational expenses: and

3. Whether appellant is entitled to deduct certain expenses as related to the investments and to accounting for taxes.

Appellant concedes certain other adjustments made by respondent with respect to the claimed deductible non-monetary contributions and casualty loss.

1. Home Office Expense

Appellant renovated a room in his home and furnished it as an office. During the appeal years appellant used the room for business purposes and in connection with his investment activities about two hours each day. At other times, the room was used by the family for nonbusiness purposes.

Section 17202 of the Revenue and Taxation Code allows a deduction for "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." Section 17252 also allows a deduction for "all the ordinary and necessary expenses paid or incurred during the taxable year (a) for the production or collection of income; (b) for the management, conservation, or maintenance of property held for the production of income; or (c) in connection with the determination, collection, or refund of any tax." On the other hand, section 17282 prohibits any deduction for "personal, living, or family expenses."

Respondent has allowed 50 percent of the amounts claimed as office expenses. We conclude that an ample allowance has been made by respondent. The record indicates that the room in question was used regularly for personal purposes as well as for investment related (and job related) activity. On the basis of the record before us, appellant has not established entitlement to a larger deduction. (Appeal of John H. Roy, Cal. St. Bd. of Equal., March 8, 1976; see Gino v. Commissioner, 538 F.2d 833 (9th Cir. 1976), cert. denied, 429 U.S. 979 [SO L.Ed.2d 587] (1976).)

2. Education Expenses

The deduction of $402.02 for some of the costs' incurred by Helen during the 1976 trip to Alaska raises the question of whether the expenses were deductible as "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business" within the meaning of section 17202 of the Revenue and Taxation Code. Helen was an elementary school teacher, and appellant claims that a portion of her expenses related to the preparation of a thesis on comparative cultural anthropology. The thesis was part of her successful pursuit of a master's degree ineducation, and it included observations with respect to all of the places visited on the trip. The itinerary was planned to meet that objective.

During the years in question, the applicable regulation provided, in part:

> Expenditures made by a taxpayer for his education are deductible if they are for education (including research activities) undertaken primarily for the purpose of:
>
> (a) Maintaining or improving skills required by the taxpayer in his employment or other trade or business, or
>
> (b) Meeting the express requirements of a taxpayer's employer, or the requirements of applicable law or regulations, imposed as a condition to the retention by the taxpayer of his salary, status or employment. (Former Cal. Admin. Code, tit. 18, reg. 17202(e), subd. (1).) (Emphasis added.) 1/

The term "education" is not restricted to the conventional meaning of instruction through attendance at classes. Certainly, "travel" may, under certain circumstances, constitute education of a type the cost of which is deductible. Pursuant to the regulation, if a taxpayer travels away from home primarily to obtain education of a type the expenses of which are deductible pursuant to the regulation, his expenditures for such travel while away from home are likewise deductible. (Former Cal. Admin. Code, tit. 18, reg. 17202(e), subd. (4).) As a general rule, however, a taxpayer's expenditures for travel as a means of education shall be considered as primarily personal in nature and not deductible. (Former Cal. Admin. Code, tit. 18, reg. 1,7202(e), subd. (3); Lee J. Roy, ¶ 69,115 P-H-Memo. T.C. (1969).)

Obviously, the Alaskan trip provided Helen with general educational benefits and was utilized in her thesis on comparative cultural anthropology.

1/ The federal regulations were changed in 1967 by eliminating the subjective "primary purpose" test. (See Treas. Reg. § 1.162-5(d) (1967).) However, during the years in question the Franchise Tax Board had not followed the Internal Revenue, Service's lead and instead has retained the "primary purpose" test.

Appellant has not, however, established that Helen is entitled to a deduction for the educational expenses under the law. Specifically, on the basis of the record before us, appellant simply has not established that the particular expenses were incurred primarily to maintain or improve Helen's skills as a primary school teacher, or to meet express requirements imposed as a condition of retaining her salary, status or employment. (See Appeal of John H. Roy, supra.) It is well established that deductions are a matter of legislative grace and that a taxpayer must prove that he is entitled to the deductions claimed. <New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 1348](1934).) Under the circumstances, we must conclude that the expenses in question were nondeductible personal expenses.

3. Investment & Accounting for Taxes Expense

Appellant had installed a telephone answering device in his home. In 1975, allegedly this equipment was intended to facilitate communications with his stockbroker. In addition, appellant and Helen paid their two daughters, who were college students, the amounts indicated for what was claimed to be financial research, and their son $200, allegedly to keep records concerning appellant's activities for tax reporting purposes. Appellant also purchased the Los Angeles Times, Time, and New Times magazines allegedly to assist in making investment.decisions.

Again, appellant must prove that he is entitled to the deductions claimed. (New Colonial Ice Co. v. Helvering, supra.) Moreover, payments made to close relatives require close scrutiny. In the absence of clear evidence to the contrary, it is reasonable to conclude that such payments are influenced by family considerations and are primarily personal in nature. (See William H. Leonhart, ¶ 68,098 P-H Memo. T.C. (1968), affd on other grounds, 414 F.2d 749 (4th Cir. 1969); J. Daie Dilworth, ¶ 45,271 P-H Memo. T.C. (1945), mod., ¶ 45,292 P-H Memo. T.C. (1945); see also L. Schepp Company, 25 B.T.A. 419 (1932).)

In the present matter, appellant contends that the answering service, Los Angeles Times, Time, and New Times magazines helped him to make proper investments. The aforementioned reading materials, however, are primarily of general interest, and they would not appear to give any special assistance with respect to choosing investments. Appellant relies upon Arthur Brookfield,

¶ 56,056 P-H Memo. T.C. (1956), where the taxpayer was allowed to deduct expenditures for certain publications. In that case, however, the publications were technical in nature and were related to the steel industry, in which the taxpayer was employed. Likewise, no adequate showing has been made that the answering service was used for investment purposes, rather than primarily on a personal basis. In regard to payments made to the children allegedly for research and fpr accounting for taxes, appellant has not established deductibility on the basis of adequate information and evidence. Under the circumstances, we must resolve the doubts against the appellant and assume that the payments were influenced mainly by family considerations.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Frederick A. Sebring against proposed assessments of additional personal income tax in the amounts of $139.48 and $298.09 for the years 1975 and 1976, respectively, be and the same is hereby modified in accordance with respondent's correction concerning the amount of each assessment. In all other respects, respondent's action is sustained.

Done at Sacramento, California, this 9th day of December, 1980, by the State Board of Equalization, with Members Nevins, Bennett, Reilly and Dronenburg present.

Richard Nevins, Chairman

George R. Reilly, Member

Ernest J. Dronenburg, Jr., Member

William M. Bennett, Member

, Member